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VIA FEDERAL EXPRESS

December 29, 2000

EX PARTE OR LATE FILED

Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Comments of Indiana Wireless Enhanced 911 Advisory Board Chair Tim Berry
(FCC Docket 94-102)

Dear Secretary:

Per the Commission's rules, enclosed are two copies of Indiana Wireless Enhanced 911 Advisory Board Chair Tim Berry's comments concerning the referenced matter. These copies are provided for inclusion in the public record.

Please call if you have any questions or concerns.

Sincerely,

BAKER & DANIELS


H. John Okeson

HJO:ftw

c: Hon. Tim Berry
c/o Mr. Chris Ternet, Policy Advisor

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
Written Ex Parte Comments of the Indiana)
Wireless Enhanced 911 Advisory Board)
Concerning Enhanced Wireless 911 Service)

CC Docket No. 94-102

EX PARTE OR LATE FILED

To the Commission:

**WRITTEN EX PARTE COMMENTS OF THE INDIANA
WIRELESS ENHANCED 911 ADVISORY BOARD
CONCERNING ENHANCED WIRELESS 911 SERVICE**

I. INTRODUCTION

The Indiana Wireless Enhanced 911 Advisory Board (the "Board") hereby submits comments regarding the implementation progress of Phase I Enhanced Wireless 911 ("E 911") service in Indiana. The Board's comments describe Indiana's E 911 experiences and identify specific impediments which the Board believes have delayed Phase I implementation. The Board brings these issues to the Federal Communication Commission's attention consistent with the Commission's past requests for comment and the Commission's inherent authority to regulate conduct in this arena.

II. UPDATE ON INDIANA'S E 911 EXPERIENCE

A. The Indiana Enhanced Wireless Emergency Telephone Service Act.

The Indiana General Assembly passed the Indiana Enhanced Wireless Emergency Telephone Service Act (the "Act") in early 1998.¹ The Act created the Board to maintain and

¹ I.C. § 36-8-16.5-1 et seq.

administer the Wireless Emergency Telephone System Fund (the "Fund"), Indiana's cost recovery mechanism. Through the Fund, the Act also mandated complete cost recovery for both wireless carriers and public safety answering points ("PSAPs") providing E 911 service in Indiana.²

Finally, although the Commission has indicated that liability protection is not a prerequisite to a carrier's obligation to provide E 911 service,³ the Act immunizes carriers and others from both civil and criminal liability related to establishing, developing, implementing, maintaining, operating and providing E 911 service except in cases of willful or wanton misconduct.⁴

B. The Indiana Wireless Emergency Telephone System Fund.

The Fund's primary resource is a monthly subscriber surcharge.⁵ Wireless carriers (or resellers) collect the surcharge and remit it to the Board. The Board then allocates the surcharge among various subaccounts.⁶ The Board may adjust the surcharge once annually and may

² I.C. § 36-8-16.5-13.

³ In the Matter of Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 18676 (1996).

⁴ I.C. § 36-8-16.5-46. The Board has also discussed extending its liability protection to all individuals who comprise, serve or otherwise represent the Board. E 911 Advisory Board Minutes, October, 2000.

⁵ The Board currently assesses a \$.65 fee on each Indiana wireless subscriber. The Board may also invest portions of the Fund in certain income-producing vehicles, creating additional cost recovery resources. I.C. § 36-8-16.5-23.

⁶ Portions of the E 911 fee are allocated to subaccounts that provide for recovery of Phase II implementation costs, wireless carrier costs, and PSAP costs.

prospectively reallocate the surcharge distribution as well.⁷ Distributions from the Fund are used to reimburse wireless carriers and PSAPs for costs incurred in complying with the Commission's E 911 requirements. To date, wireless carriers have remitted more than \$25 million in collected surcharges.⁸ The Board made its first PSAP cost recovery distribution in November of 1998⁹, and its first wireless carrier distribution in February of 1999.¹⁰ To date, the Board has distributed more than \$9 million for PSAP and wireless carrier cost recovery.¹¹

C. Indiana's Cost Recovery Process.

In 1998, the Board created a Cost Recovery Committee (the "Committee") to review wireless carrier cost recovery plans and make recommendations on the plans to the full Board. To avoid conflicts of interest, possible antitrust dilemmas and in the spirit of the Act's confidentiality provisions, the Committee is comprised of one member of the Board and two Treasurer of State employees.

Each year, wireless carriers must submit to the Committee a cost recovery plan detailing non-recurring and monthly recurring costs. The Committee reviews each plan to ensure the costs are reimbursable under the Act and makes a recommendation to the Board, based on the Fund's

⁷ I.C. § § 36-8-16.5-21, 26, 35, 36, 39.

⁸ Records of the Indiana State Treasurer.

⁹ Records of the Auditor of the State of Indiana.

¹⁰ Records of the Auditor of the State of Indiana.

¹¹ Records of the Indiana State Treasurer.

current and projected solvency, regarding the amount per-subscriber the Board may distribute to a carrier for cost recovery.¹²

To further assure wireless carriers of the Board's commitment to complete cost recovery, the Board recently adopted a policy to conduct a biannual cost recovery review. During the review, the Committee analyzes each carrier's wireless E 911 implementation costs to determine whether such costs have exceeded the Board's cost recovery disbursements during the previous six months. Presuming the Fund's balance so permits, the Board will then make up any shortfall to a carrier through a supplemental disbursement.

D. Cost Recovery Developments Since September 1999.

The Board has also taken other steps to simplify the carrier cost recovery process and create incentives to induce carriers to provide E 911 service in Indiana. In December 1999, the Board passed a policy to pay each carrier's non-recurring costs in a lump sum upon service commencement (rather than over "a reasonable period of time" as permitted by the Act¹³).

In March 2000, the Board addressed surcharge collection by resellers. Under the Act, each wireless carrier is required to collect the surcharge from every Indiana wireless subscriber.¹⁴ The Act defines wireless carriers to include "facilities based" and "nonfacilities based" resellers.¹⁵ The Board believed that many resellers were not collecting the surcharge from their subscribers (through inadvertence, ignorance or otherwise), resulting in lost revenue for the

¹² While the Board approves cost recovery plans on a "per subscriber" basis, the Board reimburses carriers for *actual costs* only.

¹³ I.C. § 36-8-16.5-26.

¹⁴ I.C. § 36-8-16.5-30

¹⁵ I.C. § 36-8-16.5-6.

Fund. To better monitor compliance with the Act and enable wireless carriers to more accurately remit fees, the Board adjusted its remittance form to clearly state classifications of subscribers, including reseller subscribers.

During the 2000 Indiana General Assembly session, the legislature passed Board-endorsed legislation allowing the Board to transfer resources between and among the Fund's subaccounts.¹⁶ This gave the Board greater flexibility to meet Phase I and Phase II costs. In its original form, the Act did not permit such transfers (resulting in "stranded" resources which could not be used elsewhere).

The Board has also addressed the issue of prepaid subscribers. The Board believes that few carriers, if any, are collecting the surcharge from prepaid customers. Carriers' prepaid customer levels vary¹⁷, but the Board believes that these wireless users represent a significant cost recovery resource. In August 2000, representatives from nine states' wireless boards met in Nashville to discuss, among other issues, ways to ensure surcharge collection from prepaid customers. Many states, including Indiana, have begun considering legislation to address this difficult issue.¹⁸

E. Other Indiana Deployment Developments.

The Hon. Tim Berry, Indiana's Treasurer of State and the Board's Chair, has actively pursued E 911 service for all Indiana citizens. Mr. Berry has worked directly with carriers to

¹⁶ I.C. § 36-8-16.5-39(b).

¹⁷ Indiana estimates the prepaid customer levels vary between 10%, *see Prepaid Patent Portends Wireless Battle*, C. Grice, CNET NEWS.COM, Dec, 19, 2000, to 75% or more according to industry representatives.

¹⁸ Wireless Enhanced 911 Advisory Board Meeting Minutes, October, 2000.

investigate and eliminate obstacles to Phase I deployment. He also dispatched Board representatives to discuss with several carriers Indiana's cost recovery process and to persuade carriers to provide E 911 service in Indiana.

The Board and Mr. Berry are not concerned only with carrier deployment. Currently, approximately 61 of Indiana's 92 counties receive E 911 service from at least one wireless carrier, and 33 of those counties are receiving service from two or more carriers.¹⁹ In June, July and August, 2000, Mr. Berry and other Board representatives traveled to those counties not yet technically capable of receiving E 911 service to educate and address PSAP concerns regarding E 911 deployment in Indiana.

III. IMPEDIMENTS TO E 911/PHASE I IMPLEMENTATION

Despite its relative success in encouraging Phase I deployment in Indiana, the Board repeatedly confronts impediments to Phase I implementation.

A. Local Exchange Carrier ("LEC") Issues.

Wireless carrier/LEC issues have persistently hindered Phase I deployment in Indiana. Carriers report that certain LECs charge unreasonable fees to allow carriers to connect to LEC networks.²⁰ Some wireless carriers believe these fees may stem from a refusal to "unbundle" services, forcing wireless carriers to pay for services they do not require. This practice may violate the Telecommunications Act of 1996, which requires incumbent LECs to provide nondiscriminatory access to network elements "on an unbundled basis at any technically feasible point on rates, terms and conditions that are just, reasonable and nondiscriminatory."²¹

¹⁹ See Indiana E 911 Deployment map attached as Exhibit A.

²⁰ See tariffs filed with the Indiana Utility Regulatory Commission.

²¹ 47 U.S.C.S. § 251(c)(3).

Wireless carriers serving Northern Indiana have reported repeated difficulties communicating with one of the three major LECs serving Indiana regarding E 911 service, hindering deployment of E 911 service in that area.²² The Board has been advised that the communications problems have largely been resolved – which should encourage further deployment of E 911 service in Northern Indiana – but that delays connecting trunks to E 911 routers may be hampering deployment. These LEC delays may violate the Telecommunications Act of 1996.²³

B. Contracts/Service Agreements.

Additionally, several wireless carriers continue to insist that PSAPs requesting E 911 service execute contracts or service agreements. Several PSAPs have refused to sign contracts, arguing that the proffered contracts often seek to impose liabilities upon them that are inconsistent with the Act or the Commission's mandates and that the contracts are unnecessarily cumbersome.²⁴ Perhaps not coincidentally, the Board understands that the two wireless carriers with the greatest E 911 service coverage in Indiana do not require contracts or service agreements.

While the Board has not interfered directly in PSAP/wireless carrier disputes, it has reminded interested parties that neither the Commission's mandates nor the Act make contracts a condition precedent to a carrier's obligation to provide E 911 service. Conversely, some wireless

²² See Indiana Deployment map attached as Exhibit A.

²³ 47 U.S.C.S. § 251(b)(1)–(5).

²⁴ Some PSAPs have signed brief contracts (essentially "service orders") which merely recited each party's responsibilities under the Act.

carriers argue that absent a specific statutory or regulatory prohibition, their request is consistent with customary commercial practice.²⁵

C. Industry Change.

A more recent challenge for the Board has been the changing landscape of the wireless carrier market. As wireless carrier mergers, buyouts, bankruptcies and sales increase, it becomes more difficult to obtain information on carrier operating authority, contact information and stages of deployment. In some instances, these problems have delayed the E 911 deployment.

Industry consolidation has also hampered efforts to appoint wireless carrier representatives to the Board. Partly to address this issue, the Board is supporting legislation to reduce the Board's size.

D. Wireless Carrier Attitude.

For the Board, the most frustrating impediment to Phase I deployment is the general indifference with which some wireless carriers approach the deployment of E 911 service. Despite the Board's repeated efforts to encourage wireless carriers to deploy E 911 service in Indiana (and the Board's commitment to complete cost recovery), many carriers continue to delay providing such service. The FCC Orders mandate that wireless carriers must deploy Phase I E 911 by the later of April 1, 1998, or within six months of a PSAP request.²⁶ Many wireless carriers serving Indiana have failed to meet these deadlines.

Wireless carriers may view both the Act and the Commission's mandates as detailing extensive obligations with no consequence for noncompliance. Indeed, not until the Commission's Fourth Memorandum Opinion and Order did the Commission affirmatively state

²⁶ FCC Memorandum Opinion and Order, CC Docket No. 94-102, FCC 97-402; FCC Second Memorandum Opinion and Order, CC Docket No. 94-102, FCC 99-352.

that it would take "any steps necessary to ensure that carriers take their obligations seriously, including assessing appropriate penalties on carriers that fail to comply."²⁷

IV. SUMMARY AND CONCLUSIONS

Indiana is proud of its progress over the last two years and its position as a leader in the defining of this important public safety service. However, the Board realizes that its task is not yet complete, and it will continue to work toward assuring 100% compliance with the Commission's mandates in Indiana.

The Board appreciates the Commission's consideration of the practical successes and difficulties that the Board has encountered and is available to supplement its comments with additional written information or personal testimony/comment should the Commission so request. It is the Board's hope that these comments will aid the Commission's efforts to identify and address, through both its inherent authority and the express power granted to it under the Telecommunications Act, those issues delaying Phase I implementation.

²⁷ FCC Fourth Memorandum Opinion and Order, CC Docket No. 94-102, FCC 00-326.

Respectfully submitted,

Indiana Enhanced Wireless 911
Advisory Board

By: 

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INDIANA ENHANCED WIRELESS 911 ADVISORY BOARD PHASE 1 DEPLOYMENT

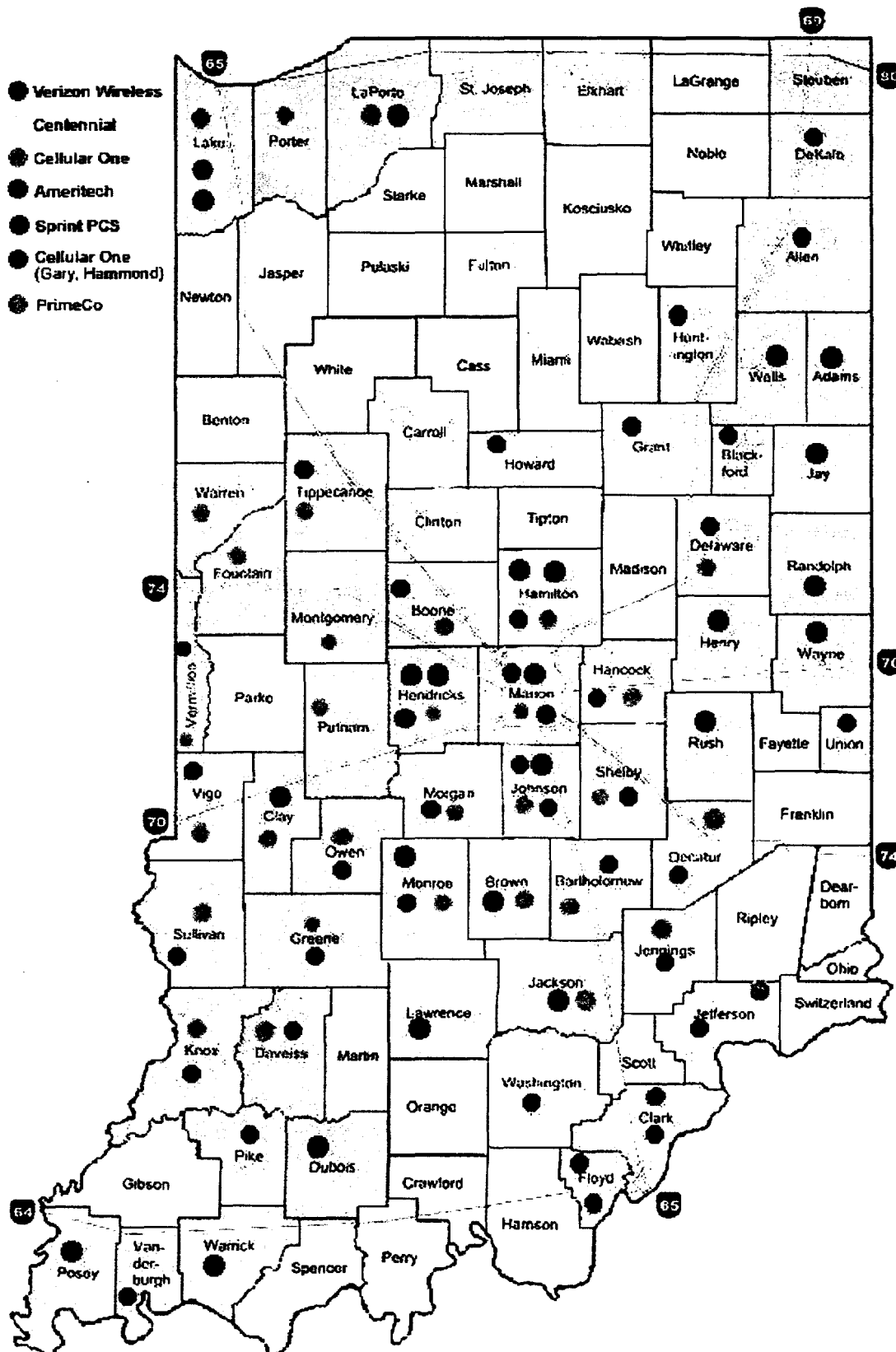


Exhibit A